Chapter 2: Where Can Your Dispute Be Submitted for Resolution?

Once a dispute has arisen, how do you determine which of the bodies discussed in Chapter 1 is the right one to resolve it? In order to answer that question, you need to know the details of the rules concerning the jurisdiction of the different bodies and to answer some questions regarding the subject matter of and the parties to your dispute. This chapter discusses the rules on the jurisdictions of the different courts and of arbitration tribunals, and provides some examples to illustrate their application. It also provides some basic information on the process by which a dispute is submitted to each of the different tribunals.

A. The Arbitrazh Courts

The arbitrazh courts are presently governed by the Federal Constitutional Law of the Russian Federation "On Arbitrazh Courts in the Russian Federation" (hereinafter the Law "On Arbitrazh Courts") and by the Arbitrazh Procedure Code (also referred to below as the "APC") of the Russian Federation, both passed in April 1995.[1] The Law "On Arbitrazh Courts" has as its primary purpose the general establishment of the courts and the definition of their structure. It does not define the jurisdiction of the arbitrazh courts with specificity, stating only that the arbitrazh courts are to resolve economic disputes and consider other cases which are assigned to their competence by the Constitution, the Law "On Arbitrazh Courts," the Arbitrazh Procedure Code or other federal laws.[2] In considering such cases, the tasks of the arbitrazh courts are defined as:

"protection of the violated or disputed rights and legal interests of enterprises, institutions, organizations (hereinafter—organizations) and citizens in the sphere of entrepreneurial and other economic activities;

facilitation of the strengthening of legality and the prevention of violations of law in the sphere of entrepreneurial and other economic activities."[3]

A more detailed definition of the competence of the arbitrazh courts is provided by Article 22 of the Arbitrazh Procedure Code (APC):

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[1] Federal Constitutional Law of the Russian Federation No. 1-FKZ "On Arbitrazh Courts in the Russian Federation," Sobranie Zakonodatel'stva RF, 1995, No. 18, Item 1589; Arbitrazh Procedure Code of the Russian Federation, Sobranie Zakonodatel'stva RF, 1995, No. 19, Item 1709. A full English translation of both can be found in the journal STATUTES & DECISIONS: THE LAWS OF THE USSR AND ITS SUCCESSOR STATES, Volume 32, No.4 (July-August 1996) (S.J. Reynolds, ed.).

[2] The general statement appears in Article 4 of the Law "On Arbitrazh Courts in the Russian Federation."

[3] The quoted language appears in Article 5 of the law "On the Arbitrazh Courts."

Article 22. Jurisdiction

1. Cases concerning economic disputes arising from civil, administrative, or other legal relationships shall be subject to the jurisdiction of an arbitrazh court [if they are]:

(1) between legal persons (hereinafter-organizations) and citizens engaging in entrepreneurial activity without the formation of a legal persons and having the status of an individual entrepreneur acquired according to the procedure established by law (hereinafter - citizens);

(2) between the Russian Federation and subjects of the Russian Federation and among subjects of the Russian Federation.

2. Economic disputes resolved by an arbitrazh court shall, in particular, include disputes concerning:

- disagreements concerning a contract the conclusion of which is envisioned by law, or [concerning which] the transfer of disagreements to the arbitrazh court for resolution has been agreed upon by the parties;
- a change in the conditions of or the abrogation of contracts;
- the failure to execute or the improper execution of obligations;
- recognition of the right of ownership;
- a demand by an owner or other legal possessor [for the return of] property from the illegal possession of another;
- violation of the rights of an owner or other legal possessor not connected with the loss of possession;
- compensation for losses;
- recognition as void (in full or in part) of non-normative acts of state bodies, bodies of local self-government, and other bodies that are not in accord with laws and other normative legal acts, and that violate the rights and legal interests of organizations and citizens;
- the defense of honor, dignity and business reputation;
- recognition of an execution or other document, with respect to which recovery is being carried out in an uncontested (nonacceptance) procedure, as not being subject to execution;
- the appeal of a refusal of state registration or an evasion of state registration within the established period of an organization or a citizen, and in other instances when such registration is envisioned by law;
- the recovery from organizations and citizens of fines by state bodies, bodies of local self-government, and other bodies exercising oversight functions, if their recovery in an uncontested (nonacceptance) procedure is not envisioned by federal law;

- a refund from the budget of monies exacted by bodies exercising oversight functions in an uncontested procedure in violation of the requirements of the law or another normative legal act.

3. An arbitrazh court shall consider other cases, including:

- concerning the establishment of facts having significance for the emergence, change, or termination of the rights of organizations or citizens in the sphere of entrepreneurial and other economic activity (hereinafter - concerning the establishment of facts having legal significance);
- concerning the insolvency (bankruptcy) of organizations and citizens.

4. In the instances established by the present Code and other federal laws, cases concerning economic disputes and other cases with the participation of formations that are not legal persons (hereinafter-organizations), and citizens who do not have the status of an individual entrepreneur shall be subject to the jurisdiction of an arbitrazh court.

5. Other cases also may be referred to the jurisdiction of an arbitrazh court by federal law.

6. An arbitrazh court shall consider cases subject to its jurisdiction in which participate organizations and citizens of the Russian Federation, as well as foreign organizations, organizations with foreign investments, international organizations, foreign citizens, and persons without citizenship engaging in entrepreneurial activity, unless otherwise envisioned by an international treaty of the Russian Federation.

This definition is a bit complex, especially at first glance. It is helpful to separate several different aspects of the analysis.

1. Jurisdiction by Specific Assignment vs Jurisdiction Under General Principles

According to the definition contained in Article 22, cases may fall within the jurisdiction of the arbitrazh courts in one of two ways: (1) They may be within the court's jurisdiction because the characteristics of the case correspond to the general elements defining the types of cases assigned to the court. These are given in points 1-3 and point 6 of Article 22. (2) They may also be within the jurisdiction of the arbitrazh courts because they are specifically assigned to the arbitrazh courts by the APC or a federal law, in accordance with points 4 and 5.

For most types of commercial disputes— contract disputes, claims for damages, and so forth — the general jurisdictional rules will apply to determine whether the arbitrazh court has jurisdiction over the case. These rules, in turn, depend upon two general criteria concerning the status of the parties and the nature of the dispute (discussed further

below). In order for a case to come within the arbitrazh court's jurisdiction on these grounds, it must meet both criteria. If it does not, it will be rejected by the arbitrazh court and will, in the majority of cases, be subject to the jurisdiction of the general courts.

Cases that fall within the jurisdiction of the arbitrazh court due to direct assignment by legislation are a special category. If a case is assigned by legislation to the jurisdiction of the arbitrazh courts, the case does not also have to meet the general jurisdictional requirements. For example, the consideration of all bankruptcy cases is assigned by the Law "On Insolvency (Bankruptcy)" to the arbitrazh courts. Cases concerning the bankruptcy of individuals will be considered by the arbitrazh courts despite the fact that they do not meet the general criteria concerning the status of the parties. The APC does not place any limitations on the ability of federal legislation to assign additional cases to the arbitrazh courts.

2. Jurisdiction Under the General Principles

The general principles defining cases which are within the jurisdiction of the arbitrazh courts require that two criteria be met. The parties to the case must meet certain status requirements, and the dispute must be an "economic dispute."

a) Status of the Parties

With respect to the legal status of the parties, the arbitrazh courts have general jurisdiction over disputes between and among legal entities and citizens registered and doing business as individual entrepreneurs, and also disputes between and among the Russian Federation and subjects of the Russian Federation. Although the language of point 1 of Article 22 is not entirely clear on the issue, the arbitrazh courts also have jurisdiction over disputes between legal entities and entrepreneurs and state bodies of various kinds. Cases involving an individual citizen who is not registered as an entrepreneur do not fall within the general jurisdiction of the arbitrazh courts, even where the legal nature of the dispute is otherwise identical to those that would be considered by the arbitrazh court. For example, a business seeking a remedy for damage to its business reputation caused by distribution of false information about it by an individual may file suit in the arbitrazh court if the individual is registered as an individual entrepreneur, but must file suit in the courts of general jurisdiction if he is not so registered. Likewise, an individual entrepreneur wishing to obtain damages due to defects in the products sold to him by an enterprise for his use in his business must file suit in the arbitrazh court, while an individual citizen sold the same defective goods as a consumer must pursue such a claim in the courts of general jurisdiction.

The status requirement applies to all of the parties in the relevant case, including third parties, if their participation is required for the proper resolution of the case. It also applies to all parties in cases in which multiple claims are combined. If even one of the parties to the case is an individual not registered as an entrepreneur, the case may not be considered by the arbitrazh court. The court has no discretion in this matter. Unlike the courts of general jurisdiction, the arbitrazh courts are considered to be specialized courts

with a restricted jurisdiction, and as such their authority is strictly limited by the language of the law(s) which grants it. Consideration of a case that did not meet the legislated requirements by an arbitrazh court would be viewed as consideration by an improper or illegal court, and the decision would be subject to reversal.

b) Nature of the Dispute

An "economic dispute" for the purposes of arbitrazh court jurisdiction is not actually "defined" in the statute, in the sense of a set of criteria that may be applied to a specific dispute to determine whether it is "economic" in nature. Instead, point 2 of Article 22 provides a list of types of dispute that will fall within this category. The list is quite broad, and includes most of the types of disputes likely to arise between business entities — contracts and other obligations (including those arising in tort), property disputes of all types, protection of business reputation, and so forth. It also encompasses most of the types of disputes likely to arise between businesses and government bodies — such as the imposition and appeal of fines and penalties, appeals of registration and licensing refusals, and appeals of other state actions taken in regard to a specific business or entrepreneur.

The list of specific types of "economic disputes" in the law, although long, is not exhaustive. Other disputes between parties meeting the status requirements may also fit within the definition. However, because neither the Law "On Arbitrazh Courts" nor the APC specifies criteria for determining when a type of dispute not listed is an "economic dispute," such a determination will be a matter for the courts to decide. A dispute between entities which are subject to the general jurisdiction of the arbitrazh courts by their status but which is not an "economic dispute" would fall within the jurisdiction of the general courts.

3. Specific Exceptions to the General Principles

The general rules which define arbitrazh court jurisdiction are subject to a number of exceptions. Two of these exceptions are stated in point 3 of Article 22. By point 3, the arbitrazh court is specifically given additional jurisdiction over all cases of insolvency (bankruptcy) of both individuals and legal entities. This provision codifies the assignment of such cases that was made by the bankruptcy legislation. Point 3 also gives the arbitrazh courts jurisdiction over cases involving the establishment of legal facts having significance for economic activity, although some of such cases would not fall within the general rules.

The third exception is not as obvious from the text of the Article, but is quite important in practice. Within point 2's list of "economic disputes" subject to arbitrazh court jurisdiction are included disputes concerning the voidance by the court of a "non-normative" act of a state body which is not consistent with law or with other normative legal acts. "Non-normative" acts of state bodies include acts and actions which concern a single individual or entity — for example, the application of the tax laws to a single enterprise — and which do not establish a general rule or principle (a "norm") to be

followed by or applied to other individuals or entities. Although the subpoint is formulated to state positively what is within the arbitrazh courts' jurisdiction, the inclusion of only non-normative acts in the list means that the arbitrazh courts do not review cases concerning the legality of regulations, instructions or other general rules. Thus, the arbitrazh courts will take jurisdiction over claims requesting that an action of a state body be held void because it is in violation of the applicable legal rules, but will not take jurisdiction over a claim requesting that the general regulation or legal rule be held void because it is in violation of higher or controlling law.

In considering this exception, an important distinction must be made between cases in which the party filing the case is requesting that the normative act itself be held void — that is, be recognized as not having legal force in relation to anyone at all — and cases in which the party filing the case only requests that a particular normative act not be applied to it, due to its inconsistency with higher law. In the first case, the arbitrazh court will not take jurisdiction over the claim. In the second, the arbitrazh court may take jurisdiction over the dispute, and will apply to the individual case the rule which has the higher legal force. Thus, in a dispute in which a party claims that a normative act applied to it is not consistent with controlling law and requests that the court compel the body which applied the normative act to apply instead the rule contained in the law, the arbitrazh court has jurisdiction. It may consider the dispute and if it finds that the normative act is inconsistent with the controlling law, it will apply the rule contained in the law. If, in the same circumstances, the party requests that the normative act itself be held to be generally void, the arbitrazh court will not take jurisdiction. In practice, the distinction may come down to the way in which the party filing suit expresses its claim.

For the reasons discussed, complaints concerning the recognition of rules, regulations, instructions and other acts as generally void — even where the challenged acts are applicable only to business entities and are designed specifically to regulate their economic activities — must, in general, be made before the courts of general jurisdiction. Several recent pieces of legislation, however, have specifically assigned cases concerning normative acts in a particular sphere to the arbitrazh courts (a particularly important example is Part I of the recently enacted Tax Code). It is quite likely that this trend will continue as legislators find it more desirable to concentrate in a single court system the interpretation and enforcement of an interconnected body of laws and regulations designed to regulate a particular sphere of the economy. Any individual dispute concerning a normative act of a state body must be evaluated carefully at the time of filing to determine whether it falls within the jurisdiction of the arbitrazh courts or the courts of general jurisdiction.

4. Jurisdiction Over Foreign Parties

The general jurisdictional rules of the arbitrazh courts do not distinguish between parties on the basis of the foreign or domestic nature of legal entities or the citizenship of individual entrepreneurs. Point 6 of Article 22 of the APC provides that the arbitrazh court will have jurisdiction over foreign legal entities, international organizations, legal entities with foreign investment, and individuals carrying out entrepreneurial activities

who are not citizens of Russia, unless it is otherwise provided in an international agreement of the Russian Federation. This rule was established by the 1995 Arbitrazh Procedure Code, and those whose businesses were originally established prior to 1995 should take special note of this change. Prior to 1995, enterprises with foreign investment were subject to the jurisdiction of the arbitrazh court only if an international agreement specifically provided for such jurisdiction or if the parties agreed to submit the dispute to the arbitrazh court. Under current law, the arbitrazh court has jurisdiction over all cases falling within the general definition of its authority, without reference to the domestic or foreign status of the parties, and the parties may not move the case from one court system to the other by agreement.

Although point 6 of Article 22 provides that the general rules for arbitrazh jurisdiction apply to foreign entities and individuals equally with Russian entities and individuals, unless an international agreement of the Russian Federation provides otherwise, the general rules are supplemented by some additional specifics. These specific rules applicable to cases concerning foreign parties are contained in Article 212 of the APC. According to these rules, the arbitrazh courts have jurisdiction in cases in which:

- a foreign person is present or resides in the Russian Federation;
- a foreign entity has a representation or subsidiary in the Russian Federation;
- a respondent has property in the Russian Federation;
- the case concerns a contract, the execution of which did take place or was to have taken place on the territory of the Russian Federation;
- the case concerns actions or other circumstances which occurred in the Russian Federation and caused damage to property;
- the case concerns unjust enrichment which took place in the Russian Federation;
- the case concerns damage to honor, dignity or reputation and the plaintiff is in the Russian Federation;
- there is an agreement on such jurisdiction between a foreign person or entity and a citizen or organization of the Russian Federation.

Three exceptions limit these general rules. The first applies to cases concerning immovable property, which are to be heard at the place of location of the property. Thus, cases concerning rights in immovable property located outside the Russian Federation will not be heard, regardless of whether one of the other criteria for jurisdiction is present, while cases concerning immovable property located in the Russian Federation will be considered at the location of the property. The second provides that suits concerning a contract for transport are to be heard at the place of location of the transportation agency. The third is the general exception for international agreements. If an international agreement of the Russian Federation contains provisions altering the rules, the provisions of the international agreement will be applied.

5. Coordination of Jurisdictional Issues Between the Arbitrazh Courts and the Courts of General Jurisdiction

While there are certainly issues of jurisdiction on which the two court systems or individual courts may disagree, the courts do make a particular effort to coordinate their approaches to questions of jurisdiction. In some cases, courts of one system may be willing to hear a case that is "close to the line" on jurisdiction, even if they are not certain that it is properly theirs, when the courts of the other system have already rejected the case on jurisdictional grounds. This ensures that parties are not left without a forum for the resolution of disputes or protection of rights. For this reason, it is important for a party in this position to make clear to the courts of the second system that the courts in the first have refused the case on the grounds that it is not within their competence.

JURISDICTION OF THE GENERAL COURTS
(Provisions of the Civil Procedure Code)

Article 3. Right to make recourse to the court for judicial protection

All interested persons shall have the right to make recourse to the court, in the procedure established by law, for the protection of violated or disputed rights and legally protected interests.

Article 25. Jurisdiction of the courts over civil cases

[The following] are subject to the jurisdiction of the courts:

- cases concerning disputes arising from civil, family, labor and collective-farm legal relationships, if even one of the parties to the dispute is an individual citizen, with the exception of instances where the resolution of such disputes is assigned by law to the jurisdiction of administrative or other bodies;
- cases concerning disputes arising from contracts for the transport of freight in direct international rail transport and air freight transport between state enterprises,
- institutions, and organizations, cooperative organizations and their associations, or other social organizations, on the one hand, and bodies of rail transport or air transport on the other, arising out of the corresponding international contracts;
- cases arising from administrative-law relationships listed in Article 231 of the present Code;
- cases concerning special proceedings, listed in Article 245 of the present Code.

Other cases shall also be within the jurisdiction of the courts [when] assigned by law to their competence.

The courts shall also consider cases in which foreign citizens, persons without citizenship, foreign enterprises and organizations participate, if it is not otherwise envisioned by inter-state agreements, international treaties or the agreement of the parties.

B. Courts of General Jurisdiction

1. Jurisdiction

As discussed in Chapter 1, the courts of general jurisdiction are the "ordinary" or general courts. Unlike the arbitrazh courts and the Constitutional Courts, which have a limited jurisdiction defined by the laws governing their structure and procedure, the courts of general jurisdiction are the default forum for any matter that is capable of being heard by a court. Their jurisdiction is defined not by positive description, but rather as all cases and issues not specifically assigned to the jurisdiction of another body — such as the arbitrazh courts or the Constitutional Court.[4] Legal provisions governing the jurisdiction of the courts are extremely broad, reflecting this conception of the courts' function.

In understanding and interpreting these provisions, it is important to keep in mind that they were written in 1964, and although amended in later years, have not been updated to deal with many intervening changes. In particular, the reference in the second paragraph of Article 25 to assignment of cases "to the jurisdiction of administrative or other bodies" and its lack of reference to the possibility of assignment to "courts" does not indicate dual or alternative jurisdiction between the arbitrazh courts and the courts of general jurisdiction. At the time of the Code's passage, the general courts were the only courts in the country. State arbitrazh would have qualified as an "administrative or other body" under this paragraph of Article 25, and the currently existing arbitrazh courts qualify as "other bodies" under that same provision.

Similarly, the last paragraph of Article 25 states, the courts of general jurisdiction are to consider cases in which foreign parties of any type participate. The paragraph in which this statement appears is not qualified by a reference to the possible assignment of the cases to "other bodies." However, as was discussed in Section A of this Chapter, Article 22, point 6 of the Arbitrazh Procedure Code gives the arbitrazh courts jurisdiction over cases with foreign participants which are otherwise within their jurisdiction under the Code. Some authors have suggested that this language produces a conflict or overlap which would allow the general courts to serve as an alternative forum for any disputes in which a foreign business entity participates.

Although the language of the relevant portion of Article 25 is broad, the paragraph containing that language cannot be read in isolation from the remaining portions of the Article or its history. At the time of its passage, and through 1995, the bodies of state arbitrazh (and later the arbitrazh courts) were specifically denied jurisdiction over cases involving foreign parties. The passage of the new Arbitrazh Procedure Code in 1995 would either qualify as the assignment of these cases to "another body," exempting them from the courts' jurisdiction, or if that provision does not apply, as the later passage of a different legal rule, effectively amending the prior rule stated in the Civil Procedure Code. (The general principles of interpretation require that a later-passed law has priority over an earlier-passed law at the same level in the hierarchy of legal acts.) Such an

interpretation does not deprive the existing paragraph of application. The general courts, must, of course, retain the ability to consider cases in which foreign firms participate as parties in order to consider cases in which private individuals sue such companies or those cases which are specifically excluded from arbitrazh court jurisdiction (e.g. the challenge of a normative act by a foreign enterprise).

2. Commercial Cases Heard by the Courts of General Jurisdiction

The broad jurisdiction of the general courts includes all criminal cases, civil disputes concerning citizens who are not individual entrepreneurs, and appeals of administrative and other state action which do not fall within the jurisdiction of the other courts. Cases establishing facts having legal significance with respect to citizens (such as recognition of a person as dead or as legally incompetent), cases concerning family matters (custody of children, division of property), inheritance issues, and a variety of other concerns fall within the jurisdiction of the general courts.

The majority of this jurisdictional list relates to individuals and their personal concerns and disputes. This is not surprising, as the jurisdiction of the arbitrazh courts, discussed above, covers most standard types of business activity. However, there are a few types of cases which are of particular relevance to commercial activity that currently fall within the jurisdiction of the courts of general jurisdiction, rather than the arbitrazh courts.

The first of these is the appeal of normative acts — that is, regulations or rules that have a general binding force — which the appealing party believes to be inconsistent with a law or with legal rules of superior force. Such rules may include regulations on the application of customs rules, rules concerning the conduct of production or sales activities, and any other rules of general application in the commercial context. As discussed in section A.3, above, the jurisdictional provisions of the Arbitrazh Procedure Code state that the arbitrazh courts consider only cases concerning non-normative acts of state bodies, unless the review of particular normative acts is specifically assigned to the arbitrazh courts by a legislative provision. This leaves most cases concerning normative acts, even if such acts regulate purely commercial issues and the complaint is being filed by a legal entity against a state body, within the “default” jurisdiction of the general courts.

The second category of cases having commercial significance but falling into the jurisdiction of the general courts is those cases in which an individual who is not a registered entrepreneur participates as a party. Disputes among the founders of a legal entity, where one of those founders is an individual, would fall into this category. Disputes arising from the conduct of a company or its officers may also fall into this category if the complaint is brought by an individual who is not a registered entrepreneur (for example, an individual share holder), although the same complaint would have to be filed in the arbitrazh courts by a legal entity holding shares in the same company. Cases in which the rights of individuals will be determined by the outcome, so that these

individuals may be necessary parties or have the right to participate as third parties, will also fall into the jurisdiction of the general courts, since the arbitrazh courts do not hear such cases.

3. Expectation of Legislative Change

Jurisdiction and procedure in the courts of general jurisdiction is currently defined by the Civil Procedure Code (also referred to hereinafter as the "CPC") of the RSFSR. The CPC was adopted in 1964 and has been extensively amended over the ensuing thirty-five years, including a significant set of amendments in 1995. Despite the extensive amendments, however, many portions of the CPC contain provisions which are clearly obsolete and refer to institutions or rules of law no longer in existence or effect.[5] Other rules are not obsolete "on their faces," but are presumably not subject to application due to their inconsistency with laws passed at a later time. The passage of a new Code of Civil Procedure has been expected for some time, and drafts of the new Code have been circulated. However, the difficulties discussed earlier concerning the nature and roles of courts of the subjects of the Federation have delayed any definition of the hierarchy and organization of the courts. Because the procedure code relies heavily on this hierarchy and organization in defining the powers of courts, grounds and hierarchies for appeal, and appeals procedures, the new procedural code is likely to be delayed until the matter is resolved.

4. Procedures for Submission and Consideration of a Complaint

Because the general courts have a limited jurisdiction over disputes related to commercial activity, and in consideration of the uncertainties associated with the state of the procedural legislation, this Handbook does not provide extensive detail concerning procedures in the general courts. It may be noted, however, that the types of commercially-related cases that are currently subject to the jurisdiction of the general courts are either not capable of transfer to an arbitration tribunal (those concerning the validity of regulation or other normative act) or are far less likely to be transferred than other commercial cases (cases concerning private individuals, with whom arbitration agreements are less likely to be concluded). For this reason, there may well be no alternative forum available, and a general overview of the procedures of the courts will be provided here.

Because of the wide variety of cases heard by the courts of general jurisdiction, the Civil Procedure Code contains many special provisions not related to types of disputes most likely to be of commercial interest. Both types of cases that are of interest — civil cases with individual participants and administrative cases challenging a legal act — are subject to the general rules of the CPC. These rules, although generally similar to those which apply in the arbitrazh court, do contain a number of important differences. Many of these are due to the difference in the dates of passage of the two codes. Some differences, however, may reflect a more solicitous attitude toward the individual citizens

[5] See, e.g., Article 26 of the CPC on the transfer of cases to "comrades courts."

who are the common users of the general courts in civil cases and who may not be legally sophisticated or well provided with legal counsel. In addition to the general rules, there are two special chapters of the CPC (Chapters 24 and 24[1]) providing some additional special rules for the consideration of administrative cases.

Civil cases are filed in a written form, which must contain a list of information contained in the CPC, and must be accompanied by payment of the filing fee. Filings are reviewed by a single judge for acceptance, who may reject them if they are fatally flawed. If a correctable error in the filing exists, the court keeps the filing and notifies the petitioner about the error, providing a period for cure. An accepted case will generally be considered by a three-judge panel of a district or city court, in the location of the respondent or that agreed by contract, in an open court session.

Procedures are relatively direct and simple, and the court is required to explain to the participants what their rights are in the process. As mentioned above, however, quite a number of provisions remain in the Code that appear to be outdated. For example, the Code provides that social organizations and labor collectives (not parties to the case) have the right, with permission of the court, to take part in the consideration of a case for the purpose of making their views on the case known to the court. Periods for the preparation and hearing of the case by the court are extremely limited. The court is given a general seven-day period for preparation of cases, which may be extended to twenty days for complex cases. For those types of civil cases which may have commercial interest, a decision is to be issued by the court within a month of completion of the preparation of the case. These periods may be somewhat lengthened, due to suspensions in the proceedings in the case according to the rules of the Code.

A number of special rules are applicable to the consideration of administrative cases concerning a challenge to normative acts. The relevant chapter of the CPC gives an aggrieved person the right either to make recourse directly to the court or to a body or official superior to the one which issued the challenged act. If a complaint is made to the superior body, the body or official is required to respond within a month. If the relevant body or official rejects the complaint, or if no answer is received, a complaint may be filed with the court. The rules provide for a very short time frame — 10 days of receipt of the complaint — for consideration of the case by the court. If the court finds the normative act, or a part of it, to be illegal or improper, that act or portion of the act is considered from the time of the issuance of the opinion to be without effect.

C. The Constitutional Court

The Constitutional Court operates on the basis of a federal constitutional law passed in 1994, which gives it jurisdiction over:

- cases concerning the constitutionality of federal laws and normative acts issued by the President, Government of the Russian Federation,

- Federation Council and State Duma; the constitutions and charters of the constituent units ("subjects") of the Russian Federation, and laws and normative acts of those units issued on matters in the joint control of the Federation and its subjects or in an area of jurisdiction belonging to the Federation; treaties and agreements between the Federation and its constituent parts and among the subjects of the Federation; and international treaties of the Russian Federation that have not entered into force;

- cases concerning a dispute about competences between federal bodies, **b**etween a federal body and a subject of the Federation, and between the highest bodies of state power of the subjects of the Federation;

- cases concerning a dispute about competences between federal bodies, between a federal body and a subject of the Federation, and between the highest bodies of state power of the subjects of the Federation;

- cases concerning a request for an interpretation of the Constitution of the Russian Federation; and

- cases concerning verification of the constitutionality of a law applied or subject to application in a specific case.

Individual citizens and legal entities have standing to submit complaints only concerning cases in the last category. It is under this provision that the Constitutional Court may provide a forum for challenge of laws or other legal acts that the petitioner believes are not consistent with the Constitution of the Russian Federation.

1. Standing

Standing to submit a petition to the Constitutional Court is strictly limited by the Law on the Constitutional Court, and for most of the types of cases over which it has jurisdiction, is defined by a specific list of state bodies and officials authorized to submit an inquiry or complaint. The review of cases concerning violation of constitutional rights and freedoms by a law applied or subject to application in a case is not, however, limited to cases submitted by a specific list of parties. (It is difficult to imagine how this might be done without arbitrary denial of review concerning some rights or some parties.) For this group of cases — the only one with which we are concerned — standing to submit a petition is limited to those individuals and/or entities whose rights have been violated (will be violated). In order to ensure that those submitting the petition do, in fact, meet this requirement, documentary confirmation must be provided that the legal act being challenged has been applied in a case or is subject to application in a case, and that the individuals or entities submitting the petition are those whose rights have been or will be violated. The petition is not, however, considered to be a direct appeal of the decision of another court or body. Indeed, the Constitutional Court has no power to review the decisions of other courts and can rule only on the constitutionality of the act in question.

A business entity is considered to possess constitutional rights and obligations, to the extent that such rights and obligations are consistent with the nature of the entity. Such entities have standing to submit a petition to the Constitutional Court concerning the violation of those rights which can be possessed. In addition, a petition may be submitted by individuals who are participants in the business entity (partners, founders, shareholders) on the basis of violations of their rights as individuals.

2. Scope of Review

The Constitutional Court's jurisdiction in such cases is limited to the review of the constitutionality of the law or legal act in question. This review, however, includes a number of aspects of the constitutionality of the legal act, including:

- constitutionality of the substantive content of the act (content of its norms);
- constitutionality of the form of the act (i.e. whether the legal rules contained in the challenged act may be established by a legal act of the corresponding type and level);
- constitutionality of the procedure of its passage, including the adoption, confirmation, signing, publication and entry into force;
- constitutionality from the point of view of consistency with the balance of powers and division of authority between federal bodies of power as established by the constitution;
- constitutionality from the point of view of consistency with the division of the subjects of jurisdiction and authority between federal bodies and the subjects of the Federation.

3. Procedure for Submission and Consideration of a Petition

A petition to the Constitutional Court must be filed in written form and must contain the information and appendices listed in the checklist below. In addition to the appendices listed, the petitioner may append other documents concerning the case to the petition, including proposals concerning witnesses or experts to be called, or other materials related to the petition. **Petitions submitted by individuals must be submitted in three copies, while those submitted by legal entities must be submitted in thirty copies.**

The Constitutional Court may reject a petition immediately if it is clearly not within the Court's jurisdiction, is in the wrong form, was filed by an improper party, or there is no evidence of payment of the state filing fee. If the petition is not returned on one of these formal grounds, it must next go through a process designed to determine whether the petition should be considered on its merits by the Court. The Chair of the Court assigns a preliminary review of the case to one or more of the judges, which must be

completed within two months. The conclusions of the preliminary review are presented to a plenary session of the Court, and a decision concerning acceptance of the case for consideration in its substance must be made within a month of that presentation.

CHECKLIST FOR A FILING WITH THE CONSTITUTIONAL COURT
Information Required in the Filing

- ❑ indication of the Constitutional Court as the court to which it is being submitted
- ❑ name of the petitioner, address and other information concerning the petitioner; any necessary information on the representative of the petitioner (if applicable) and his authority
- ❑ name and address of the state body which issued the act being challenged
- ❑ provisions of the Constitution of the Russian Federation and of the Law on the Constitutional Court which indicate the right to make recourse to the Constitutional Court in the given case
- ❑ the exact name, date of adoption, number, source of publication, and other information concerning the challenged act
- ❑ the specific grounds, under the Law on the Constitutional Court, for the consideration of the petition
- ❑ statement of the position of the petitioner and justification of that position, referring to the relevant provisions of the Constitution
- ❑ the demand made by the petitioner concerning the case, which in this type of case would be that the act be recognized as unconstitutional
- ❑ a list of the documents appended to the petition

In Addition, The Petitioner Must Submit as Appendices:

- ❑ the text of the act being challenged
- ❑ a copy of an official document confirming the application or possibility of application of the law or act that is the subject of the petition to the resolution of a specific case
- ❑ a power of attorney for a representative (if applicable)
- ❑ a document confirming payment of the state filing fee (15 times the minimum monthly wage for entities or one minimum wage for an individual citizen)
- ❑ a translation into Russian of any documents in other languages

If the Court accepts the case for decision on its merits, it is assigned for preparation to one or more reporting judges. The reporting judge(s) study the case and ensure that the necessary materials are collected and witnesses, parties and experts called to appear at the court session for its consideration. The reporting judge(s) also present the case to the rest of the members of the Court at the session in which it is heard.

The case will be heard in a session of one of the two chambers of the Court, which are made up of one half of the Court's members. Only one case is heard during any given session, and during the session the reporting judge(s), the parties, and other invited persons (experts, witnesses) will be heard and questions may be asked by the Court. Decisions are made by a majority vote of the chamber in a closed deliberation. The results of the vote are not to be revealed, although judges have the right (but not the obligation) to set forth a special opinion in the case if they are not in agreement with part or all of the decision of the Court. If the majority of the judges believe that the correct decision in the case is one which is not consistent with a legal position previously expressed by the Court, the case cannot be resolved by the chamber and must be transferred to the plenary session of the Court for consideration by all of its members. There are no time limits imposed upon the hearing of the case or the period within which the decision must be made.

4. Effect of Filing and Effects of Ruling

If a case giving rise to the petition to the Constitutional Court (that is, the case in which the challenged legal act is subject to being applied) is still in the process of consideration in another court, the acceptance of a petition in the Constitutional Court does not require the suspension of the case. The Constitutional Court must notify the court in which the case is being considered of the acceptance of the petition, and the court has the right, but no obligation, to suspend the case until the issuance of a decree by the Constitutional Court.

A legal act, or individual provisions thereof, found by the Constitutional Court to be unconstitutional loses its legal force and may not be applied in the specific case at issue nor in other pending cases nor by state bodies other than the courts. The Constitutional Court, as it is not a court of appeal, issues only its decree on the constitutionality of the relevant legal act(s), and does not issue a decision directly addressing the rights and obligations of the specific parties to the case in any other respect.

D. Arbitration Bodies

1. International vs Domestic Arbitration

Discussions of the jurisdiction and procedures for arbitration in the Russian Federation are somewhat complicated by the fact that the existing legislation on arbitration consists of several different, and not entirely consistent, legal acts relating to "international" arbitration and to arbitration generally. These acts include (1) the Statute on the Arbitration Court which appears as Appendix No. 3 to the Civil Procedure Code, providing very general rules concerning arbitration of civil disputes subject to the jurisdiction of the general courts, (2) the Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes ("the Temporary Statute"), passed in 1992 to govern arbitration of disputes subject to the jurisdiction of the arbitrazh courts, and (3) the Law on International Commercial Arbitration, passed in 1993 to govern international

commercial arbitration, primarily at the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (MAC).

At the time that the acts listed were adopted, there was little or no overlap in their coverage. Arbitration for international commercial disputes and for maritime disputes had been available for decades, but exclusively at the ICAC and MAC, each of which had its own statute and rules. The Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes applies by its terms only to the arbitration of disputes subject to arbitrazh court jurisdiction, and at the time of passage of the Temporary Statute the arbitrazh courts had no general jurisdiction over international disputes. The Temporary Statute specifically exempts from its coverage the two international arbitration tribunals which were in existence at the time of its passage - the ICAC and the MAC — so there was no overlap in the application of the rules. Likewise, since the Temporary Statute applies only to disputes otherwise subject to the jurisdiction of the arbitrazh courts and Appendix 3 to the Civil Procedure Code can apply only to those which would otherwise be subject to the general courts, there was little or no overlap in the application of the two provisions to domestic disputes. In 1993, the Law "On International Commercial Arbitration" was passed. This law was intended to bring legislation on international arbitration into line with Russia's obligations as a signatory to the 1958 New York Convention (by way of legal successorship to the USSR). The terms of the law apply only to international commercial arbitration, and the statute on the ICAC is an appendix to the Law. The 1993 Law does not apply to "domestic" arbitration at all.

The rules envisioned in the three documents, although similar in some respects, are not identical. This is particularly true with respect to the rules concerning the execution of arbitral awards, including the limitations period for presentation of the award for execution and the jurisdiction of the courts in issuing the corresponding execution order. There are, however, other differences as well, including differences in the dispositive and imperative nature of the rules which must be observed by arbitration tribunals — a matter of significance as violation of the imperative rules may result in reversal of an award by the courts.

Between the passage of the listed acts and the present, the general jurisdictions of the different courts have changed and the number of existing arbitration tribunals has grown precipitously. As was mentioned in Chapter 1, one recent study found 250 arbitration tribunals of different types. While many of these tribunals, by their founding rules, accept only "domestic" disputes, some have statutes authorizing them to accept international commercial disputes for resolution as well. These include several tribunals accepting commercial disputes generally, such as those under the Union of Jurists and the Moscow [City] Chamber of Commerce and Industry, and also some that were formed to arbitrate particular types of disputes, such as the facilities established by the Moscow Interbank Currency Exchange and the national Association of Stock Exchanges. These developments have significantly complicated the application of the various laws and statutes.

The Temporary Statute, by its terms, applies to cases that would otherwise be subject to the jurisdiction of the arbitrazh courts. Since the passage of the 1995 Arbitrazh

Procedure Code, the simple presence of a foreign party or an enterprise with international investment does not remove disputes from the jurisdiction of the arbitrazh courts, if the disputes are otherwise subject to them. This would suggest that the Temporary Statute applies to arbitration of those disputes, unless they are being considered by the ICAC or MAC, which are specifically exempted by the Temporary Statute. However, the Temporary Statute itself also provides that it will apply to international disputes only by agreement of the parties. Thus, an international dispute otherwise subject to arbitrazh court jurisdiction, but in which the parties have not specifically agreed to the application of the Temporary Statute, might have to be governed by the 1993 Law. A dispute with a foreign element in which some individuals participate as parties would be subject to the jurisdiction of the general courts, not the arbitrazh courts, and so arbitration of such a dispute would seem to fall within the provisions of Appendix 3 to the Civil Procedure Code. But this Appendix is not entirely consistent with the 1993 Law or with Russia's treaty obligations under the New York Convention, and therefore the 1993 Law probably takes precedence on those issues when there are international parties participating. The differences in rules for execution of awards and general rules for procedure among the different laws will mean that an arbitration tribunal which accepts all kinds of commercial disputes must have several sets of rules, to be applied depending upon the nature of the parties.

The inconsistencies in the rules are likely to create increasing difficulties over time. As foreign investment in Russian companies expands through such means as stock ownership, the existence of "international investments" in a company may be increasingly difficult to determine by any simple means. Moreover, the term "international investments" itself may become less than clear. Does international financing qualify a company as one with "international investments"? What about stock holding through a domestic nominee? Since the presence of "international investments" is what determines which law applies regarding arbitration, the answers to these questions would be significant. One option in the interim would be for parties arbitrating before a general arbitration tribunal to be required to declare themselves as "international" at the outset or be subject to the "domestic" rules, or for tribunals to be required to make a finding in this regard in each case. A more desirable solution would eliminate the confusion surrounding the various statutes and bring the domestic and foreign rules closer together.

In February of 1998, a draft law "On Arbitration in the Russian Federation," passed its first reading in the lower house of the Russian Parliament. The draft law applies to the formation and activities of all arbitration tribunals located on the territory of the Russian Federation, eliminating the need to determine what rules apply on the basis of the court that the dispute would otherwise be heard in, and the confusing effects of changes in court jurisdictions. In providing a single set of rules for the formation of a panel of arbitrators and of imperative and default rules for procedures, the new law would eliminate problems presented by differences between Appendix 3 and the Temporary Statute. By its terms, however, the draft law does not apply to "international commercial arbitration," which would continue to be governed by the 1993 Law "On International Commercial Arbitration." Thus, arbitration facilities which accept both domestic and international disputes would continue to need to be attentive to differences between the

two pieces of legislation, and the problem of identification of the "international" status of a dispute would remain.

2. Jurisdiction of Arbitration Tribunals

The general rule concerning the competence of arbitration tribunals is that civil law disputes that are otherwise within the jurisdiction of either the arbitrazh courts or the courts of general jurisdiction may be transferred to an arbitration tribunal by agreement of the parties. Disputes which do not qualify as "civil-law" disputes are not subject to resolution by arbitration. This would include administrative disputes (e.g. those concerning the actions of a state body), disputes concerning the establishment of a fact having legal significance, and any other dispute or matter which is not subject to resolution by the will of the parties and requires that a competent body apply a legal rule or standard. Within the category of civil-law disputes, the general exceptions to arbitrability are (1) those disputes that are assigned by legislation to the exclusive competence of a court or other body; and (2) those disputes concerning which legislation specifically prohibits arbitration.

With respect to international commercial disputes, the 1993 Law "On International Commercial Arbitration" defines the general limits of jurisdiction of arbitration bodies over such cases. That law defines the sphere of international arbitration as including two broad types of cases:

(1) cases concerning contractual or other civil-law disputes arising out of foreign trade, where the place of business of one of the parties is located outside the Russian Federation; and

(2) cases in which an enterprise with foreign investments, international organization, or international association operating on the territory of the Russian Federation has a dispute with another such entity or with a domestic entity, and also cases concerning disputes among the founders of such enterprises, organizations or associations.

Further definition of the jurisdiction of individual arbitration tribunals is dependent upon the founding documents, charter or statute, and rules of each particular tribunal. Presentation of the specific rules of all of the arbitration tribunals which are authorized to resolve international disputes is beyond the scope of this Handbook.

By far the most commonly used arbitration tribunal for international commercial disputes is the International Commercial Arbitration Court under the Chamber of Commerce and Industry of the Russian Federation (the "ICAC"). The ICAC's Statute and rules were based on the UNCITRAL model rules and are consistent with those rules and with practices of international commercial arbitration tribunals in other countries. In defining its own jurisdiction, the ICAC's Statute repeats the two elements of the 1993 Law's definition of the sphere of international commercial arbitration which are given above. The ICAC's Rules,[6] in discussing its jurisdiction, expand upon this definition by

listing the following examples of civil law relationships which may give rise to disputes subject to ICAC arbitration:

- ➢ the purchase and sale (delivery) of goods;
- ➢ the performance of works or rendering of services;
- ➢ the exchange of goods and/or services;
- ➢ the carriage of goods and passengers;
- ➢ commercial representation and intermediary services;
- ➢ rental (lease);
- ➢ scientific and technical exchanges and the exchange of other results of creative activities;
- ➢ construction of industrial and other objects;
- ➢ licensing operations;
- ➢ credit and settlement operations;
- ➢ insurance;
- ➢ joint entrepreneurship;
- ➢ other forms of industrial and entrepreneurial cooperation.

The jurisdiction of the ICAC concerns all civil law relationships arising out of these activities and is not limited to disputes related to the contracts which establish them. Thus, the ICAC could have jurisdiction over a case concerning compensation for harm caused (tort) between parties subject to its jurisdiction, even if the events involved were not envisioned by a contract between the parties. For the ICAC to have such jurisdiction, however, the arbitration agreement between the parties would have to be sufficiently broad that it would cover all disputes between the parties, or the parties would need to agree to arbitrate the specific dispute before the ICAC.

3. Requirement of Agreement

***The submission of a dispute to an arbitration tribun*al always requires an agreement between the parties, and the relevant agreement must be in writing.** The agreement may cover a specific dispute, disputes concerning a specified subject matter, or all disputes between the parties which are subject to arbitration. Multi-party agreements concerning arbitration may be concluded. Whatever the scope of the agreement, however, it is important that it be clear. Russian courts have reversed/refused to execute arbitration awards where the language of the agreement could be construed not to require arbitration.

An agreement on arbitration may be in a contract or written separately. Arbitration provisions of contracts retain force regardless of the validity of the contract. Where the matter is governed by the Law "On International Commercial Arbitration," an agreement to arbitrate may also be concluded by means of the exchange of a filing of claim in which the petitioner states the existence of an agreement and a substantive answer to the claim

[6] A full English translation of the ICAC's Rules of Procedure can be found in 22 Review of Central and East European Law 33-53 (1996) (translation by William B. Simons and Curtis Vaughn-Kirov).

in which the existence of the agreement is not disputed. For matters governed by the 1993 Law, an agreement to arbitrate may also be concluded by reference in a contract to another document in which the arbitration agreement is stated. These means of concluding an agreement to arbitrate are not recognized by the Temporary Statute and so may not be applied in "domestic" cases.

The rules concerning recognition of an arbitration agreement vary between the arbitrazh courts and the courts of general jurisdiction. For those cases that would otherwise be subject to consideration by the arbitrazh courts (most commercial cases), a party wishing to enforce an arbitration agreement must petition the court concerning the matter by the time of its first submission on the substance of the case.[7] The existence of a valid arbitration agreement will not serve as grounds for reversal of an arbitrazh court decision unless the objection to the court's jurisdiction was made in the proper time. According to Articles 129 and 219 of the Civil Procedure Code, however, the courts of general jurisdiction may not consider a case where a valid arbitration agreement between the parties exists. This general statement deprives the court of jurisdiction, and will allow the reversal of an issued decision on the grounds that the dispute should have been resolved by the corresponding arbitration tribunal.

4. Procedure for Submission of a Dispute

The form and procedure for submission of a dispute to an arbitration tribunal is defined by the rules of the particular tribunal. A review of the rules of submission for all of the arbitration tribunals to which a commercial dispute could be submitted is beyond the scope of this Handbook. Referring to the ICAC, the most common forum for international commercial arbitration in the Russian Federation, the rules of procedure are quite consistent with international practice and were based on the UNCITRAL model rules. The newly formed St. Petersburg International Commercial Arbitration Court has adopted the UNCITRAL model rules as its rules for procedure. Tribunals that accept both domestic and international disputes, and particularly those designed for the resolution of only particular types of disputes, have differing procedural rules, depending upon their purposes and the legislative acts that served as the model for their drafters.

5. Execution and Appeals of Arbitral Awards

In general, arbitral awards are to be executed voluntarily by the parties within the time period specified in the award. ***If an award is not honored by the party required to do so, mandatory execution of the award may be sought through an execution order issued by a Russian court or arbitrazh court.*** This execution order is then submitted to the court enforcer (the bailiff service) for enforcement of the award through the same procedures used for any court judgment. Periods of limitation for the presentation of an execution order for enforcement vary depending upon whether the order concerns an international or a domestic arbitral award. These issues are discussed in detail in Chapter 5.

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[7] This rule is found in Article 87 of the Arbitrazh Procedure Code. See also Chapter 3 of this Handbook concerning procedures in the arbitrazh courts in the first instance.

Arbitral awards are final, and are not subject to appeal on grounds of error in the evaluation of the facts or the application of the law. In general, mandatory enforcement of an arbitral award may be refused by the court from which it is requested if:

(1) there was not a valid arbitration agreement or a party was without capacity;
(2) if the party objecting could not participate due to improper notice of the proceedings;
(3) if the composition or procedures of the arbitration tribunal were not those agreed by the parties;
(4) if the dispute was not subject to arbitration under Russian law; or
(5) if the award violates the public policy of the Russian Federation.

Although similar, the formulation of the rules applying to refusal of enforcement of arbitral awards varies somewhat between those issued in domestic and in international matters, and between international matters resolved by a Russian arbitration tribunal and those resolved by a tribunal outside Russia. They are discussed in more detail in Chapter 5.

E. Submission of a Complaint to the Procuracy or to an Executive Body

1. Complaint to the Procurator

Chapter 1's discussion of the Procuracy and of executive bodies responsible for enforcement of particular laws noted that the procuracy may be a source of legal assistance with some disputes, as may some executive bodies for disputes within their areas of responsibility.

The procuracy has no capacity to intervene in or resolve disputes between private parties. However, its supervision powers over state bodies of various kinds make it an alternative avenue for complaints concerning improper or illegal actions of those bodies. The submission of a protest by the procurator requires the body involved to make a specific answer to the procurator within a limited period, either stating the measures it has taken to rectify the problem or stating its reasons for disagreement with the procurator's conclusion about improper activities. The procurator also has the authority to conduct a "verification" of the observance of legality by bodies falling within its supervision powers, including demand for documents or explanations or physical inspection of its premises. This authority may give a procurator convinced by the complaint received the ability to obtain evidence of a violation that would be difficult for a party to obtain on its own

The procurator's authorities go to the observance of the laws by the bodies under its supervision. In practice, this means that the procurator will be more interested in complaints concerning clear and convincing violations of a plain rule than in complaints

which rest on a dispute with the relevant body about the proper interpretation of particular part of a law. The procurator has no authority to interpret the laws, and disputes concerning proper application and interpretation of the laws where no clear rule has been established belong in a court rather than the procurator's office.

There is no specified form for a complaint to the procurator's office. For reasons of efficiency and clarity, a written statement containing copies of necessary documents and evidence of the improper acts is desirable.

2. Complaint to Other State Bodies

Some state bodies enforcing the law in a particular sphere are also alternative sources for assistance in the resolution of disputes. One example of such a body is the Ministry for Antimonopoly Policy, which takes complaints from citizens and legal entities in the areas of competition law (abuse of a dominant position, restrictive agreements, and so forth), advertising law (false claims, commercial defamation) and consumer protection law. A number of types of common commercial disputes may fall within its jurisdiction. Another example is the Federal Commission on the Securities Market, which may address some complaints concerning shareholders rights or corporate governance. Other bodies will also take complaints from citizens or entities for investigation, where the complaint concerns their areas of responsibility.

The procedure for submission of a complaint to various state bodies is defined by each of the relevant bodies, but it is generally quite informal, and sometimes an investigation can be initiated on the basis of orally provided information. Because many of the bodies involved have a positive duty to enforce the law, rather than a function as a "neutral" body for dispute resolution, they often must respond to indications that the relevant law is being violated. Like the procuracy, they may have investigative authority in their areas of expertise that substantially exceeds that of a private party, which may be of assistance in proving a claim when necessary evidence is not in the control of the complaining entity. In some cases, the enforcement body has the authority to impose fines and to issue mandatory order concerning the behavior of a recipient (cease and desist orders, restoration of the status quo ante) or to suspend or withdraw licenses or permissions to carry out particular activies. Such bodies do not, however, have the power to award damages directly to a private party injured by the illegal behavior. In such cases, the private party may need to file suit in the relevant court to receive compensation. The pursuit of the complaint before the executive body may be of assistance as an evidentiary matter or to gain the support of the body (or its intervention as a third party, if it has the right) in the case.

JURISDICTION OF THE COURTS - EXAMPLES

1. A registered individual entrepreneur wishes to file suit against a state body supervising traffic on the automobile roads to contest penalties imposed on him for violation of traffic rules while he was delivering products to a customer with his truck.

The case is not subject to the jurisdiction of the arbitrazh courts, since the fine was imposed on the individual entrepreneur for a violation in personal conduct, not in relation to business activity. The parties meet the general requirement for status, but not the requirement for subject matter. The case is within the jurisdiction of the general courts.

2. An individual entrepreneur wishes to file suit against a state body supervising freight transport to contest its confiscation of cargo from his trucks due to irregularities in the shipping documents.

The case is subject to the jurisdiction of the arbitrazh court, as it meets both party status and subject matter requirements.

3. A legal entity wishes to file suit against a state licensing body to contest its decision refusing to issue a license, on the grounds that the licensing body incorrectly applied the law.

The case is subject to the jurisdiction of the arbitrazh courts, as it meets both party and subject matters requirements.

4. A legal entity wishes to file suit requesting that a licensing law be held to be generally without effect. The licensing body refused to issue the license on the basis of a general law issued by the relevant subject of the Federation which does not permit the issuance of such licenses to legal entities organized as partnerships. The legal entity is a partnership, and believes that the licensing body correctly interpreted and applied the general law as written. However, the legal entity believes that the law is itself invalid, because it violates federal legislation on licensing. The legal entity wants a court to find the law itself void.

The case is not subject to the jurisdiction of the arbitrazh courts. Although the parties and the subject matter meet the general requirements, the plaintiff in this case is challenging the validity of a law that is generally applicable to all partnerships — that is, a normative legal act. The arbitrazh courts consider such cases only in relation to non-normative acts, or where the review of such acts is directly assigned to them by statute. Proper jurisdiction for the case depends upon the plaintiffs reasons for challenging the act. If the plaintiff believes that the law is not consistent with federal law, the case is subject to the jurisdiction of the general courts. If the plaintiff believes that it is unconstitutional on its face, the case is subject to the jurisdiction of the Constitutional Court.